

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

STEWART P. VESS)	
Claimant)	
VS.)	
)	Docket No. 1,039,165
STATE OF KANSAS)	
Respondent)	
AND)	
)	
STATE SELF-INSURANCE FUND)	
Insurance Fund)	

ORDER

Respondent and its insurance fund (respondent) appealed the August 8, 2008, Preliminary Hearing Order entered by Administrative Law Judge Rebecca Sanders.

ISSUES

Claimant alleges that on June 9, 2006, he fractured his skull and injured his left shoulder when makeshift scaffolding collapsed and he fell, striking his head and back on the concrete floor. At the August 6, 2008, preliminary hearing, claimant requested the Judge to authorize Dr. C. Louis Klobasa, a psychiatrist, to treat the problems he was having from his closed head injury. In the August 8, 2008, Order, the Judge granted claimant's request and designated Dr. Klobasa as the treating physician.

Respondent contends the Judge erred by granting claimant psychiatric treatment. Respondent argues that claimant's psychiatric problems are not related to his June 2006 accident at work as he had psychiatric problems, including hallucinations, before that accident. In addition, respondent argues claimant sustained an intervening accident between his June 9, 2006, accident and his June 12, 2006, visit to the emergency room and, therefore, his psychiatric problems are due to that intervening event. Moreover, respondent argues the Board should give no weight to Dr. Klobasa's opinions regarding the cause of claimant's psychiatric problems because the doctor allegedly did not have an accurate medical history as he was unaware of the alleged intervening event. And, finally, respondent contends the Board should give no weight to claimant's testimony as he is not credible. Accordingly, respondent requests the Board to reverse the August 8, 2008, Order and to deny claimant's request for benefits.

Conversely, claimant contends the Order should be affirmed. Claimant argues there is no evidence of any intervening accident.

The only issue before the Board on this appeal is whether claimant's psychiatric condition is directly related to his June 9, 2006, accident.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the undersigned finds the Preliminary Hearing Order should be affirmed.

Claimant worked for the State of Kansas as a truck and trailer mechanic. On Friday, June 9, 2006, claimant was working approximately four feet in the air when his makeshift scaffolding collapsed. Claimant fell to the concrete floor, striking his head and back. Claimant was immediately taken to the emergency room at Mercy Regional Health Center (Mercy West) in Manhattan, Kansas. The history recorded in the Mercy West Clinic Discharge Summary reads, as follows:

While at work fell backwards off scaffolding about 4 feet high. States landed "flat on my back[.]" Denies LOC. Has drsg. to back of his head, occipital area, c/o headache, left shoulder and shoulder blade pain. Denies vision change or NV. No c/o numbnesss [sic] in extremities. Drsg. removed from head, has small area of swelling and abrasion. Area cleansed with hibiclense. Also has abrasion to left shoulder blade area.¹

The discharge summary also stated that claimant's next appointment at Mercy West was scheduled for June 12, 2006, at 3:45 p.m. That document also indicates claimant had x-rays of his thoracic spine, skull, and left shoulder, which were read as being normal.

When claimant appeared for a follow-up appointment at the medical center on Monday, June 12, 2006, he was given a CT scan. Later that evening, the medical center telephoned claimant and advised they were referring him to the KU Medical Center, where he was taken by ambulance. Claimant was advised he had a skull fracture and two areas of intracranial bleeds.

At the August 2008 preliminary hearing, claimant indicated he now has or had experienced headaches, dizzy spells, depression, anxiety, tremors and auditory hallucinations that he attributed to his June 9, 2006, accident and resulting head injury.

¹ P.H. Trans., Resp. Ex. A.

In late September 2006, claimant underwent a neuropsychological evaluation by Edward E. Hunter, Ph.D. The history noted in Dr. Hunter's September 2006 report indicates that claimant's CT exam at the KU Medical Center revealed an inferior right frontal lobe hemorrhage, epidural hematoma along the left occipital bone, and a non-displaced fracture near the base of the skull. Moreover, Dr. Hunter noted claimant's medical records indicated claimant's delusions and auditory hallucinations began after the June 9, 2006, accident. The doctor concluded claimant sustained a traumatic brain injury on June 9, 2006, when he fell from a height of about four feet and hit the back of his head on the concrete below. Dr. Hunter diagnosed Delusional Disorder Secondary to Traumatic Brain Injury. Moreover, Dr. Hunter's report did not state that claimant sustained any type of intervening injury between his accident on June 9 and his return to the medical center on June 12, 2006.

Eventually, in March 2007, claimant came under treatment of Dr. C. Louis Klobasa, a psychiatrist. The doctor diagnosed Psychotic Disorder and Organic Affective Syndrome secondary to the closed head injury claimant sustained as a result of his June 9, 2006, accident. In addition, the doctor believes claimant has tardive dyskinesia and tardive akathisia (conditions characterized by automatic muscular movements in the former and motor restlessness in the latter) secondary to the antipsychotic medications he has taken. Dr. Klobasa does not indicate in his reports that claimant sustained any intervening injury or accident between his fall at work and his second visit to the medical center.

A review of the medical records from the KU Medical Center that were introduced at the preliminary hearing also indicates claimant saw a psychiatrist one time in 1984 following a traffic offense and that claimant admitted to hearing things while on guard duty in the military. But those records also indicate that claimant denied experiencing any other paranoid behavior or thoughts before his head injury. In addition, the medical records indicate that claimant's mother was interviewed and she denied that claimant experienced those symptoms before his June 9, 2006, head injury.

In September 2007, claimant saw Dr. Sathyashankar Subbanna for a neurology consultation. The doctor's September 14, 2007, report indicates claimant's psychiatric manifestations began after his June 9, 2006, head injury. Based upon his evaluation, the doctor concluded claimant's tremors and shaking in the extremities were related to his nervousness and anxiety disorder.

Finally, in March 2008 Dr. John F. McMaster evaluated claimant at respondent's request to provide an impairment rating. Dr. McMaster found no causal relationship between claimant's accident at work and the psychological and psychiatric conditions reported by the other doctors. The doctor concluded no additional medical care was needed for claimant's occupational injury but it would be anticipated claimant would need treatment for his unrelated co-morbid psychiatric condition, which the doctor did not

identify. Dr. McMaster's report does not reflect that he has any type of expertise in psychiatric matters.

Despite Dr. McMaster's opinions, at this juncture the greater weight of the evidence establishes claimant's psychiatric problems are related to his June 9, 2006, accident and resulting closed head injury.

Respondent has challenged claimant's credibility on the basis that claimant was admitted late at night to Mercy West on June 12, 2006. But the medical documents that respondent introduced at the preliminary hearing indicate claimant was scheduled for a follow-up visit on that date at Mercy West and that it was determined claimant should undergo a CT scan. Those notes read in pertinent part:

Although patient states his headache and overall condition are improving because of the patient[]s continued headache and the development of ecchymosis under left eye after discussing case with Dr. Schlageck it was decided we proceed with a CT of the head and sinuses without contrast. This will be performed immediately. Will phone patient with results and treatment plan. . . .²

Those records support claimant's testimony that he underwent the CT scan and was later advised he was being sent to the KU Medical Center.

Although claimant may have forgotten he had x-rays at his June 9, 2006, trip to the emergency room, that is understandable and does not destroy his veracity. Claimant's testimony is credible. On the other hand, respondent's contention that claimant sustained an intervening accident or injury between his accident on June 9 and his second visit to Mercy West on June 12, 2006, is conjecture and not supported by the evidence.

In conclusion, the undersigned finds claimant sustained a closed head injury as a result of his June 9, 2006, accident and that his present need for psychiatric treatment is directly related to that event. Consequently, the August 8, 2008, Preliminary Hearing Order should be affirmed.

By statute, preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.³ Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2007 Supp. 44-551(i)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.

² *Id.*, Resp. Ex. E.

³ K.S.A. 44-534a.

WHEREFORE, the undersigned affirms the August 8, 2008, Preliminary Hearing Order entered by Administrative Law Judge Rebecca Sanders.

IT IS SO ORDERED.

Dated this ____ day of October, 2008.

KENTON D. WIRTH
BOARD MEMBER

c: Jeff K. Cooper, Attorney for Claimant
Bryce D. Benedict, Attorney for Respondent and its Insurance Fund
Rebecca Sanders, Administrative Law Judge